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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,833

05/10/2006

Georgios Psaros

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3781

26574

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07/20/2009

SCHIFF HARDIN, LLP
PATENT DEPARTMENT
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EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

07/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,833	Applicant(s) PSAROS, GEORGIOS	
	Examiner CHRISTOPHER BLIZZARD	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-7,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-7,9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to amendment filed 4/21/09. As directed claims 1, 4, and 8 were cancelled, claims 9 and 10 were added and claims 2, 3, and 5-7 were amended. Therefore this application currently has claims 2,3, 5-7, 9 and 10 pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2, 3 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Westenskow (4,127,121).

4. Regarding claim 9, Westenskow discloses a method for reducing the carbon dioxide content in a dead volume in a breathing apparatus comprising the steps of; respirating a patient with a gas supplied via a first gas flow path containing a dead space (fig. 1, between #2 and #11); generating a flow of gas from the patient through an outlet from the first gas flow path to bypass the dead space and flow through a carbon dioxide absorber (10) by means of an air circulator (7); and returning gas passed through absorber (10) to an inlet (fig.1, near #2) of first gas flow path.

5. Regarding claim 2, Westenskow discloses a method further comprising continuously generating the gas flow, but means of a air circulator (7) (fig. 1) (column 3, lines 21-22).

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6. Regarding claim 3, Westenskow discloses a method further comprising conducting the gas flow past a gas monitor (3) (fig. 1) for at least one of qualitative and quantitative determination of a partial component in the gas (column 3, lines 25-29).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westenskow (US 4,127,121) view of Perhag (The Reflector).

9. Regarding claim 10, Westenskow discloses an anesthesia apparatus comprising; a first gas flow path with dead space(fig. 1, between #2 and #11) connected to a ventilator (11), the respiratory system of a patient (1) and an anesthesia source (13); and a second flow path from an outlet (fig. 1, below #10) through a carbon dioxide absorber (10) and a flow generator (7) then to an inlet of the first flow path (fig. 1, near #2). Westenskow does not disclose a reflector located in the dead space of the first gas flow path, however, Perhag teaches a reflector in the dead space of an anesthesia apparatus (fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the apparatus of Westenskow with a reflector as taught by Perhag in order to provide the advantage of using less of costly anesthesia gas.

10. Regarding claim 5, Westenskow discloses a device comprising a gas monitor (3) connected in series with the flow generator (7) and the absorber (10) (fig. 1) for at least

one of qualitative and quantitative determination of a partial component in the gas (column 3, lines 25-29).

11. Regarding claim 6, Westenskow discloses a device comprising a gas conditioner, in the form of a feedback control circuit used to replace oxygen in the system (fig. 1) (column 3, lines 25-26), connected in series with the flow generator and the absorber for conditioning of the flowing gas.

12. Regarding claim 7, Westenskow discloses a device wherein a gas conditioner is a gasifier (13) (fig. 1) for liquid anesthetic (column 3, lines 41-56).

Response to Arguments

13. Applicant's arguments filed 4/21/2009 have been fully considered but they are not persuasive. Applicant's argument concerning the lack of dead space present in the invention of Westenskow is not persuasive. As cited by applicant in provided publication "Understanding Anesthesia Equipment" on page 151 a dead space is defined as "...the space in a breathing system occupied by gases that are rebreathed without any change in composition." According to this definition the apparatus of Westenskow contains a dead space as can be seen in figure 1 between ventilator 11 and patient interface 2.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/CHRISTOPHER BLIZZARD/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771